

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

Plaintiff,

v.

MCTAGGART, *et al.*,

Defendants.

Case No. 1:22-cv-01421-NODJ-BAM (PC)

ORDER GRANTING PLAINTIFF'S MOTION
FOR THE COURT TO INSTRUCT UNITED
STATES MARSHALS SERVICE TO
CONDUCT PERSONAL SERVICE
(ECF No. 39)

ORDER DIRECTING PERSONAL SERVICE
OF MOTION TO SUBSTITUTE BY UNITED
STATES MARSHALS SERVICE WITHOUT
PREPAYMENT OF COSTS
(ECF No. 38)

Plaintiff Barry Louis Lamon ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was removed from Kings County Superior Court on November 3, 2022. (ECF No. 1.) The second amended complaint has not yet been screened.

On October 11, 2023, Defendants filed a status report indicating that Defendant Tillery's next of kin, Michael Tillery, was personally served with a notice of suggestion of death on October 3, 2023, in accordance with Federal Rule of Civil Procedure 4(e)(2). (ECF No. 33.) The Court found that the ninety-day period for filing a motion for substitution of Defendant Tillery, pursuant to Federal Rule of Civil Procedure 25, was therefore triggered as of October 11, 2023, and the parties were directed to file a motion for substitution of Defendant Tillery, and to

1 personally serve the motion on the non-party successor or representative on or before January 9,
2 2024. (ECF No. 34.)

3 Currently before the Court is Plaintiff's renewed motion for substitution on the non-party
4 successor or representative of Defendant Tillery, together with a motion requesting personal
5 service of the motion for substitution by the United States Marshals Service ("USMS"), filed
6 December 11, 2023. (ECF Nos. 38, 39.)

7 Although Defendants have not yet had the opportunity to file a response to Plaintiff's
8 motion for the Court to instruct the USMS to conduct personal service, the Court finds a response
9 unnecessary. The motion for personal service is therefore deemed submitted. Local Rule 230(1).

10 Having reviewed Plaintiff's request, the Court finds it appropriate to direct the USMS to
11 personally serve non-party Michael Tillery with Plaintiff's motion to substitute, pursuant to
12 Federal Rule of Civil Procedure 4(c)(3).

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. Plaintiff's motion for personal service by the USMS, (ECF No. 39), is GRANTED;
15 2. The Clerk of the Court shall complete one (1) USM-285 form with the following
16 information:

17 **Michael Tillery**
18 **12861 Mt. Echo Drive**
Ione, CA 95640

- 19 3. The Clerk of the Court shall forward the following documents to the USMS:
20 a. One (1) copy of the December 11, 2023 motion to substitute, (ECF No. 38);
21 b. One (1) completed USM-285 form; and
22 c. Two (2) copies of this order, one to accompany the motion to substitute and one
23 for the USMS;
24 4. On or before **January 9, 2024**, the USMS is DIRECTED to personally serve the motion,
25 along with a copy of this order, on non-party Michael Tillery at the above Ione, California
26 address; and

27 ///

28 ///

5. Within **ten (10) days** after personal service is effected, the USMS SHALL file the return of service, along with the costs subsequently incurred in effecting service, and said costs shall be enumerated on the USM-285 form.

Dated: **December 15, 2023**